

THE HONORABLE MARSHA J. PECHMAN

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

IN RE WASHINGTON MUTUAL  
MORTGAGE BACKED SECURITIES  
LITIGATION

This Document Relates to: ALL CASES

**Master Case No. 2:09-cv-00037-MJP**

**CLASS ACTION**

**APPLICATION IN SUPPORT OF AN  
ORDER FOR DISTRIBUTION OF  
CLASS SETTLEMENT FUND AND  
REIMBURSEMENT OF PLAINTIFFS'  
COUNSEL'S EXPENSES.**

**NOTE ON MOTION CALENDAR:**

**JANUARY 3, 2014**

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1 Cohen Milstein Sellers & Toll PLLC and Scott & Scott LLP (“Lead Counsel”) submit  
 2 this Application pursuant to paragraph 10 of the Stipulation of Settlement with Defendants dated  
 3 September 4, 2012 (the “Stipulation”). By Order and Final Judgment dated January 11, 2013  
 4 (the “Final Order”), this Court approved the Settlement and directed the parties to consummate  
 5 the Stipulation in accordance with its terms and provisions. Paragraph 10 of the Stipulation  
 6 requires Lead Counsel to apply to the Court, on notice to Defendants’ Counsel, for an order (the  
 7 “Class Distribution Order”) approving the Claims Administrator’s administrative determinations  
 8 concerning the acceptance and rejection of claims submitted herein and approving any fees and  
 9 expenses not previously applied for, including the fees and expenses of the Claims  
 10 Administrator, and directing payment of the Net Settlement Fund to Authorized Claimants.  
 11 Pursuant to the Stipulation, Lead Counsel hereby applies for the Class Distribution Order and  
 12 requests that the Court postpone entry of such order for 30 (thirty) days from the filing of this  
 13 application in order to provide time for any claimant disputing Lead Counsel’s recommendations  
 14 to respond.

## 15 I. BACKGROUND

16 On September 4, 2012, Lead Plaintiff Policemen’s Annuity and Benefit Fund of the City  
 17 of Chicago, Lead Plaintiff Doral Bank Puerto Rico, and Plaintiff Boilermakers National Annuity  
 18 Trust (collectively, “Plaintiffs”), and defendants WaMu Asset Acceptance Corp. (“WMAAC”),  
 19 WaMu Capital Corp. (“WCC”), David Beck, Diane Novak, Rolland Jurgens, and Richard  
 20 Careaga (together, the “Defendants”) (Defendants and Plaintiffs are the “Parties”) entered into  
 21 the Stipulation. The Stipulation provided for the settlement of this action on behalf of a Class  
 22 consisting of all persons or entities who purchased or otherwise acquired the following WaMu  
 23 Mortgage-Pass Through Certificates: 2006 AR-7 tranche 2A; 2006 AR-12 tranche 1A1; 2006  
 24 AR-16 tranches 2A1, LB1, LB2, LB3, 3B1, 3B2, and 3B3; 2006 AR-17 tranche 1A; 2006 AR-18  
 25 tranche 2A1; and 2007-HY1 tranches 1A1 and 3A3 (collectively, the “Certificates”), on or  
 26 before August 1, 2008, pursuant and/or traceable to their Registration Statements and

1 accompanying Prospectuses filed with the SEC for the respective issuing entities and who were  
 2 damaged thereby. Excluded from the Class are the Defendants; any officers or directors of the  
 3 Defendants; any corporation, trust, or other entity in which any Defendant has a controlling  
 4 interest; the members of the immediate families of David Beck, Diane Novak, Rolland Jurgens,  
 5 and Richard Careaga or their successors, heirs, assigns, and legal representatives,

6 The Notice of Proposed Settlement of Class Action, Motion for Attorneys' Fees and  
 7 Reimbursement of Expenses and Settlement Fairness Hearing and the Proof of Claim (the  
 8 "Notice and Proof of Claim") set forth the terms of the proposed Settlement. The Notice and  
 9 Proof of Claim were mailed to all Class Members pursuant to the Order for Notice and Hearing,  
 10 dated September 19, 2012 (the "Preliminary Order"). Pursuant to the Court's Preliminary Order,  
 11 Lead Counsel retained Garden City Group, Inc. ("GCG") (the "Claims Administrator"), a firm  
 12 specializing in the administration of class action settlements, to print and mail copies of the  
 13 Notice and Proof of Claim forms to the members of the Class, to prepare tax returns for the  
 14 Settlement Fund, to process the Proofs of Claim submitted by Class Members, and to effectuate  
 15 distribution of the Net Settlement Fund to the Class Members who submitted valid Proofs of  
 16 Claim.

17 On January 11, 2013, the Court held a hearing to consider the proposed Settlement,  
 18 approved the proposed Settlement as fair, reasonable, and adequate, dismissed this action as  
 19 against the Defendants, and directed the parties to consummate the Stipulation in accordance  
 20 with its terms and provisions.

## 21 II. CLAIMS ADMINISTRATION

22 Under the terms of the Stipulation, a \$26,000,000 Settlement Fund was established for  
 23 the settlement of the Settled Claims asserted against the Defendants. Pursuant to the Stipulation  
 24 and the Notice and Proof of Claim, all Class Members wishing to participate in the Settlement  
 25 Fund were required to submit Proofs of Claim by mail, postmarked on or before March 18, 2013.  
 26 As demonstrated by the accompanying Affidavit of Stephen J. Cirami (the "Cirami Affidavit"),

1 the Claims Administrator received and reviewed all submitted claims and, to the extent that a  
 2 claim was deficient in any regard, the Claims Administrator notified the claimant of the  
 3 deficiency and advised the claimant as to the possible ways to cure the deficiency. Where a  
 4 claimant failed to cure a defective claim after notice, or where the claim showed that the  
 5 claimant was not entitled to receive a share of the Net Settlement Fund, the Claims Administrator  
 6 notified the claimant of the rejection of the claim and provided the claimant with notice of the  
 7 method for the claimant to request this Court's review of the Claims Administrator's  
 8 administrative determination rejecting the claim. Copies of sample rejection letters are attached  
 9 as exhibits to the Cirami Affidavit at ¶ 11 and Exhibit A.

10 **A. Late, Yet Otherwise Eligible Claims Should Be Accepted.**

11 Seven eligible claims were received after the March 18, 2013, submission deadline. No  
 12 claim has been rejected because it was received after the initial submission deadline and we  
 13 believe no delay has resulted from the acceptance of these claims. It is our belief that when the  
 14 equities are balanced, it would be unfair to prevent an otherwise valid claim from participating in  
 15 the Net Settlement Fund solely because it was submitted after the cut-off date, but while the  
 16 claims were still being processed. Accordingly, it is respectfully requested that this Court  
 17 approve the administrative determination not to reject valid claims submitted after the March 18,  
 18 2013, deadline solely because of lateness.

19 However, there must be a final cut-off date after which no more claims may be accepted  
 20 in order that there may be a proportional distribution of the Net Settlement Fund. Acceptance of  
 21 any claim received after preparation of this application would necessarily require a delay in the  
 22 distribution. Accordingly, it is also respectfully requested that this Court enter an Order  
 23 directing that no claim submitted after November 21, 2013 be included in the initial distribution  
 24 for any reason whatsoever. *See In re Orthopedic Bone Screw Prods. Liab. Litig.*, 246 F.3d 315,  
 25 329 (3d Cir. 2001) ("There is no question that in the distribution of a large class settlement fund,  
 26 'a cutoff date is essential and at some point the matter must be terminated.'") (citations omitted).

**B. Ineligible Claims Should Be Rejected.**

Pursuant to paragraph 17(e) of the Stipulation, all rejection letters specifically provided that a claimant had the right, within twenty days after the mailing of the rejection, to contest the rejection and request a hearing before the Court. No claimant has an outstanding request for this Court's review of the rejection of his or her claim. For the reasons described in the Cirami Affidavit, the Claims Administrator and Lead Counsel recommend that the Court approve the Claim Administrator's rejection of ineligible claims.

It is respectfully requested that the Court enter an order approving the administrative determinations accepting and rejecting claims as set forth herein. It is further requested that the Court delay entry of such order for 30 days from the filing of this application to provide time for these claimants to respond to this submission if they choose to do so.

**III. FEES AND EXPENSES OF CLAIMS ADMINISTRATOR**

Pursuant to paragraph 10 of the Stipulation, Lead Counsel applies to the Court, with due notice to Defendants' Counsel, for an order approving payment of the fees and expenses of the Claims Administrator. In accordance with the Claims Administrator's agreement with Lead Counsel to act as the Claims Administrator herein, the Claims Administrator was responsible for mailing notice to the Class, processing the claims, preparing the tax returns for the Settlement Fund, and distributing the Net Settlement Fund to Authorized Claimants. As set forth in Exhibit C to the Cirami Affidavit, the Claims Administrator's fees and expenses for its work on behalf of the Class total \$283,834.01, of which \$216,492.56 is unpaid. Lead Counsel, therefore, respectfully requests that the Court direct and authorize the payment from the Settlement Fund of the \$216,492.56 balance due to the Claims Administrator.

**IV. REIMBURSEMENT OF PLAINTIFFS' COUNSEL'S EXPENSES**

Since this Court's approval of Plaintiffs' Counsel's prior expenses in its order dated January 11, 2013, Plaintiffs' Counsel has incurred additional expenses in the aggregate amount

1 of \$43,435.86 (the addition of which nevertheless keeps expenses below the \$4 million provided  
 2 in the Notice as the maximum that would be sought by Plaintiffs' Counsel). These expenses  
 3 include \$39,168.35 in payments for electronic document storage, \$3,384.58 for travel, \$749.58  
 4 for electronic legal research, \$8.40 for postage, \$115.71 for staff overtime, and \$9.24 for long-  
 5 distance telephone. *See* Declarations of Daryl F. Scott and Joshua S. Devore in Support of  
 6 Petition for Reimbursement of Expenses.

7 Reimbursement of Plaintiffs' Counsel's expenses in a common fund case is routine.  
 8 Reasonable costs are reimbursable when they are the type typically billed by attorneys to paying  
 9 clients in the marketplace. *See Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). The  
 10 expenses set forth above constitute these types of costs. *See, e.g., Thornberry v. Delta Air Lines,*  
 11 *Inc.*, 676 F.2d 1240, 1244 (9th Cir. 1982), *vacated and remanded on other grounds*, 461 U.S.  
 12 952 (1983); *In re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1177-78 (S.D. Cal. 2007).  
 13 Plaintiffs' Counsel's request for reimbursement of their expenses is reasonable and should be  
 14 granted.

## 15 **V. DISTRIBUTION OF NET SETTLEMENT FUND**

16 It is also respectfully requested that the Court enter an order directing and authorizing  
 17 distribution of the balance of the Settlement Fund, plus the interest accrued thereon, after the  
 18 deduction of the fees and expenses previously awarded and those requested herein, to the Class  
 19 Members whose claims have been accepted as set forth on the list of accepted claims submitted  
 20 with the Cirami Affidavit, in proportion to their Recognized Losses as shown therein. *See*  
 21 Cirami Affidavit Exhibits B-1, B-2.

22 In order to allow the full and final distribution of the Net Settlement Fund, it is necessary  
 23 to bar any further claims against the Net Settlement Fund and to provide that all persons involved  
 24 in the review, verification, calculation, tabulation, or any other aspect of the processing of the  
 25 claims submitted herein, or otherwise involved in the administration or taxation of the Net  
 26 Settlement Fund, be released and discharged from any and all claims arising out of such

1 involvement beyond the amount allocated to them. Accordingly, it is respectfully requested that  
2 the Court enter an Order allowing for these terms.

3 **VI. DISPOSITION OF ANY UNCLAIMED/UNCASHED BALANCE**

4 Based on the substantial experience of Lead Counsel in similar distributions, it can be  
5 expected that a certain number of the payments to be distributed to Class Members who filed  
6 valid claims will not be cashed promptly. In order to encourage Class Members to promptly  
7 cash their distributions and to avoid or reduce future expenses relating to unpaid distributions,  
8 we propose that all the distribution drafts bear a notation "CASH PROMPTLY, VOID AND  
9 SUBJECT TO RE-DISTRIBUTION IF NOT CASHED WITHIN 120 DAYS AFTER ISSUE  
10 DATE."

11 Paragraph 21 of the Stipulation provides that if any funds remain in the Net Settlement  
12 Fund by reason of uncashed checks, or otherwise, after the Claims Administrator has made  
13 reasonable and diligent efforts to have Authorized Claimants who are entitled to participate in  
14 the distribution of the Net Settlement Fund cash their distribution checks, then any balance  
15 remaining in the Net Settlement Fund six (6) months after the initial distribution of such funds  
16 shall be used: (a) first to pay any amounts mistakenly omitted from the initial distribution to  
17 Authorized Claimants or to pay any late, but otherwise valid and fully documented claims  
18 received after the cut-off date used to make the initial distribution, which were not previously  
19 authorized by the Court to be paid, provided that such distributions to any late post-distribution  
20 claimants meet all of the other criteria for inclusion in the initial distribution; (b) second to pay  
21 any additional settlement administration fees and expenses, including those of Lead Counsel as  
22 may be approved by the Court; and (c) finally, to make a second distribution to Authorized  
23 Claimants who cashed their checks from the initial distribution and who would receive at least  
24 \$10.00 from such second distribution, after payment of the estimated costs or fees to be incurred  
25 in administering the Net Settlement Fund and in making this second distribution, if Lead Counsel  
26 determines that such second distribution is economically feasible. If, four (4) months after such



1 second distribution, if undertaken, or if such second distribution is not undertaken six (6) months  
 2 after the initial distribution, any funds remain in the Net Settlement Fund after the Claims  
 3 Administrator has made reasonable and diligent efforts to have Authorized Claimants who are  
 4 entitled to participate in this Settlement cash their checks, the Claims Administrator is to transfer  
 5 any funds remaining in the Net Settlement Fund to a 501(c)(3) organization chosen by Lead  
 6 Counsel and approved by the Court. Lead Counsel requests that in the event of such transfer,  
 7 these residual funds be transferred to the Council of Institutional Investors' Research and  
 8 Education Fund, a nonprofit, nonpartisan 501(c)(3) fund that educates the public, investors,  
 9 corporations, and policymakers about issues relating to corporate governance, investment, and  
 10 accounting standards.

11 The proposed Class Distribution Order confirms the Stipulation's provisions for such re-  
 12 distribution of any residue of the Net Settlement Fund.

13 **VII. THE ORDER FOR DISTRIBUTION OF CLASS SETTLEMENT**  
 14 **FUND SHOULD BE APPROVED**

15 Lead Counsel submits that the work performed, as explained above, was conducted fairly  
 16 and in accordance with the terms and provisions of the Stipulation. Accordingly, Lead Counsel  
 17 has moved for an Order: (a) approving the administrative determinations of the Claims  
 18 Administrator accepting and rejecting claims submitted herein; (b) directing payment of  
 19 \$216,492.56 to the Claims Administrator for the unpaid balance on fees and expenses incurred  
 20 and to be incurred in connection with the settlement administration, taxation, and distribution of  
 21 the Settlement Fund; (c) directing distribution of the Net Settlement Fund, after deduction of the  
 22 payments requested herein, to Class Members whose Proofs of Claim have been accepted; (d)  
 23 authorizing the transfer of any funds remaining in the Net Settlement Fund after the distribution  
 24 to Authorized Claimants described above to the Council of Institutional Investors; (e) authorizing  
 25 destruction of the paper Proofs of Claim one year after distribution of the Net Settlement Fund,  
 26 and authorizing destruction of electronic copies of claim records three years after distribution of

the Net Settlement Fund; and (f) granting reimbursement of Plaintiffs' Counsel's expenses.

### VIII. CONCLUSION

For the reasons described above, Lead Counsel's Application for an Order for Distribution of Class Settlement Fund should be approved.

DATED: December 2, 2013

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 4, 2013, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send electronic notification of such filing to all counsel of record and additional persons listed below:

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